IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2193 OF 2002

Brihanmumbai Municipal Corporation. ...Petitioner.
Vs.
Dattatraya B. Sonawane & Anr. ...Respondents.
....
Mr. S.K. Talsania with Ms. Reeta Vora i/b. Crawford Bayley & Co. for the Petitioner.
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CORAM : DR.D.Y.CHANDRACHUD, J.

September 4, 2006.

ORAL JUDGMENT :

The First Respondent was employed as a Conductor by the Brihanmumbai Electric Supply and Transport Undertaking on 9th May 1978. At the material time, the First Respondent was working as a Conductor on the Ferry service which was plying between Manori and Marve. Acting on information that the First Respondent had been collecting the fare without issuing tickets to travelling passengers, a check was carried out on 19th November 1987. The check of alighting passengers revealed that eight out of fourteen passengers had no tickets. The passengers stated that they had paid the fare to the First Respondent, but that he had not issued tickets although demanded. When the inspectorial staff

questioned the First Respondent, it is alleged that he did not offer any reply. Signed statements of some of the passengers were recorded in the presence of the First Respondent. The “bag check” of the First Respondent revealed that he was carrying an excess amount of Rs. 11.05.

2. The First Respondent was chargesheeted on 16th December 1987 under Standing Order 20(c) (“Dishonesty in connection with the business of the Undertaking”); Standing Order 20(j) (“Gross neglect of work”); and Standing Order 20(k) (“Breach of rules, regulations and instructions for the maintenance and running of any department”). A departmental enquiry was convened in which the First Respondent was represented by a Union Representative. The Enquiry Officer came to the conclusion that the charge of misconduct stood established. The past record of the First Respondent showed that punishments were imposed upon him for misconduct during the course of his service, some of them being of a similar nature. The First Respondent was dismissed from service on 4th May 1988. The departmental appeal that was filed by the First Respondent having failed, he moved the Labour Court in an application under

Sections 78 and 79 of the Bombay Industrial Relations Act, 1946.

3. By an order dated 26th April 1993, the Labour Court allowed the application and granted reinstatement with back wages to the First Respondent. The order of the Labour Court was challenged by the management in appeal (Appeal (IC) No.28 of 1993). The Industrial Court set aside the order of the Labour Court and held that the finding of misconduct that was recorded in the disciplinary enquiry was not perverse. However, the proceedings were remanded back to the Labour Court to decide as to whether the punishment was disproportionate. On remand the Labour Court, by an order dated 29th December 1993, came to the conclusion that the imposition of a punishment of dismissal was disproportionate. An order of reinstatement with full back wages and continuity of service was passed. The Undertaking carried the matter in appeal. The Industrial Court by its order dated 7th August 2001, modified the order of the Labour Court. While confirming the order of reinstatement with continuity of service, the Industrial Court reduced the quantum of back wages to 50%.

4. Counsel appearing on behalf of the Petitioner submitted that each of the reasons that weighed with the Labour Court was specious. The charge upon which the finding of misconduct rested was a serious charge involving the finances of the Undertaking. Counsel submitted that in view of the settled position of law laid down by the Supreme Court, the interference of the Labour Court in the disciplinary jurisdiction was clearly not warranted. The Industrial Court having found an error on the part of the Labour Court ought to have set aside the order of reinstatement and back wages in its entirety.

5. The First Respondent has not appeared in these proceedings. The application before the Labour Court was filed by the Second Respondent on behalf of the First Respondent. The report of the Bailiff shows that the Second Respondent has been served.

6. There is merit in the submission that has been urged on behalf of the Petitioner that the judgment of the Labour Court suffers from a clear and patent perversity. The Labour Court noted in the course of the order on remand that the misconduct

was proved. The only question which remained for the Labour Court was to determine on remand whether the punishment of dismissal was disproportionate. The Labour Court has adverted to several punishments that were imposed on the First Respondent in the past. However, the Labour Court found fault with the Undertaking on the ground that for similar misconduct in the past, a 'lighter' punishment had been imposed. According to the Labour Court, the dismissal of an employee on account of a defalcation of an amount of Rs.11/- was not justified. The Labour Court held that the misconduct was not so grave as to warrant a dismissal from service. *Ex-facie* the reasons which weighed with the Labour Court were unfounded and specious. A charge against a Conductor of a transport Undertaking of collecting fares from passengers without issuing tickets is grave and serious. The Conductor in the present case was also found with an excess of cash in his possession. The Undertaking was justified in drawing an inference that since passengers from whom fares were collected were not issued tickets, the charge of misconduct was duly established in the enquiry. That being the position, it would not be possible to hold that the punishment was disproportionate. The Industrial Court in the course of its judgment was of the view

that the punishment had been set aside on a "flimsy ground". But, the Industrial Court also proceeded to re-evaluate the merits of the charge in the disciplinary proceedings and held that the Enquiry Officer had not "concentrated on the point of wrong collection of the fare". Similarly, the Industrial Court observed that the "procedural aspect regarding awarding Identity Card to the employees had not been taken into consideration" and the "raiding staff themselves were not knowing the exact procedure for collecting the fare". The Industrial Court was patently in error in reopening the merits of the finding of misconduct which was already settled by the Industrial Court in its earlier order. The remand of the earlier proceedings was on the question of disproportionality of the punishment. In these circumstances, there is merit in the submission which has been urged on behalf of the Petitioner that the Industrial Court was in error in declining to set aside the judgment of the Labour Court.

7. The Supreme Court has considered issues similar to those which are raised in the present proceedings. In **Karnataka State Road Transport Corpn. vs. B.S. Hullikatti**,[1] a Bus

1 (2001) 2 SCC 574

Conductor engaged by a Transport Undertaking was found to have collected fare at a particular trip at the rate of Rs. 2.25, but had issued tickets of a denomination of Rs. 1.75. The Labour Court set aside the punishment of dismissal which order was confirmed by the High Court. The Supreme Court held that the principle of *res ipsa loquitur* was applicable. The Supreme Court held that charging 50 paise per ticket more from as many as 35 passengers could only be to obtain financial benefits by the Conductor. The act was held to be either dishonest or to be so grossly negligent that the Conductor was not fit to be retained in service. The Supreme Court cautioned against misplaced sympathy by the Labour Courts in such cases when, on checking, it is found that a Bus Conductor has either not issued tickets to a large number of passengers or has issued tickets of a lower denomination knowing fully well the correct fare to be charged. The Court has held as follows :

> "It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. <u>It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare</u>." (emphasis supplied).

The same view has been reiterated in **Regional Manager, UPSRTC Etawah vs. Hoti Lal**,[2] wherein the Supreme Court held as follows:

> "It needs to be emphasised that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. (see Alexander Machinery Dudley Ltd. v. Crabtree (1974 LCR 120)). A mere statement that it is disproportionate would not suffice. ... **It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is must and unexceptionable**." (emphasis supplied).

2 2003 I CLR 712

8. Having regard to these settled principles of law, the orders passed by the Courts below are clearly unsustainable. The charge of misconduct has been duly held to be established. The charge is grave and serious. The past record of the workman was not free from taint. On numerous occasions in the past punishments were imposed. In fact, in **Janata Bazar v. Secretary, Sahakari Noukarara Sangha Etc.**,[3] the Supreme Court held that in case of proved misappropriation, there is no question of considering past record. However, in this case, even the past record was not clean.

9. In these circumstances, this petition has to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer clause (B). The orders of the Labour Court dated 29th December 1993 and of the Industrial Court dated 7th August 2001 are quashed and set aside. The Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

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3 2000 II CLR 568